

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Petition of 2001 Jane F. McCarthy GRAT No. 5,

Petitioner,

For an Order Pursuant to the Federal  
Arbitration Act, 9 USC §1 et. seq.,  
Confirming an Arbitration Award,

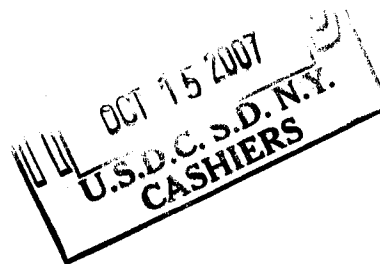
-against-

Abbas A. Shah, Linuxor Asset Management,  
LLC and Linuxor Capital Management, LLC,

Respondents.

INDEX No. 07CV5618  
Hon. Denise Cote

AMENDED PETITION TO  
CONFIRM ARBITRATION  
AWARD



Petitioner 2001 Jane F. McCarthy GRAT No. 5, by its attorneys, Pickard and Djinis  
LLP, herein respectfully alleges:

**Parties**

1. Petitioner 2001 Jane F. McCarthy GRAT No. 5 – Article Second is a trust organized under Alaska law. Its principal place of business is 610 East South Temple, Suite 200, Salt Lake City, Utah 84102.
2. Under the terms of the trust, the trustees have the sole and absolute authority to hold, manage and dispose of the assets of the trust. John O'Brien, Phillip G. McCarthy and Alaska Trust Company are the three trustees of the trust. John O'Brien and Phillip G. McCarthy reside in Utah, where they have lived and worked for over 20 years. Alaska Trust Company is a corporation organized under the laws of the state

of Alaska and maintains its principal place of business in Anchorage, Alaska.

Accordingly, for purposes of diversity of citizenship under 28 U.S.C. § 1332, each of the trustees of Petitioner 2001 Jane F. McCarthy GRAT No. 5 Holdings L.P. is domiciled in either the states of Alaska or Utah. *Affidavit of Phillip G. McCarthy*, ¶5, dated September 27, 2007 attached hereto as **Exhibit A** and incorporated herein by reference.

3. Respondent Abbas A. Shah (“Shah”) is an individual residing at 188 East 78<sup>th</sup> Street, Apartment 11A, New York, New York. *Affidavit of Abbas A. Shah*, ¶2, dated September 7, 2007 (herein referenced as “Shah Affidavit”).
4. Respondent Linuxor Capital Management, LLC (“LCM”) is a Delaware limited liability company and Abbas A. Shah is the managing member of LCM. *Shah Affidavit*, ¶2. The only other member of LCM is Tydus Richards, an individual who lives and works in the state of California. *Affidavit of Paul J. Bazil*, ¶13, dated October 1, 2007, attached as an exhibit to Petitioners’ Reply Memorandum and referred to herein as “Bazil Affidavit.”
5. Respondent Linuxor Asset Management, (“LAM”) is a Delaware limited liability company and Abbas A. Shah is the managing member of LAM. *Shah Affidavit*, ¶2. The only other member of LAM is Tydus Richards. *Bazil Affidavit*, ¶13.
6. For purposes of diversity of citizenship under 28 U.S.C. § 1332, each of the Respondents is domiciled in the states of New York or California and is not domiciled in either the states of Alaska or Utah.

**Jurisdiction**

7. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332, based upon the amount in controversy and the diversity of the citizenship of the parties. As set forth in Paragraph 16 herein, the amount in controversy exceeds \$75,000. Further, as set forth herein in Paragraphs 1 – 6 above, there is complete diversity of citizenship of the parties.

**Statement of Facts**

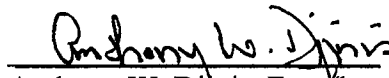
8. On or about August 26, 2005, Petitioner served Respondents with its Demand for Arbitration under the NFA Code of Arbitration and Statement of Claim for Arbitration with supporting exhibit against Respondents with the Arbitration Department of the National Futures Association (the “NFA”). *Bazil Affidavit*, ¶2.
9. On or about October 10, 2005, Respondents LAM, LCM and Shah filed Submission Agreements to the NFA in which each provided they submitted “the ...matter in controversy as set forth in the Demand for Arbitration...in accordance with the Bylaws, Rules and Code of Arbitration of the National Futures Association.” In addition, in their Submission Agreements to the NFA, Respondents agreed “to abide by and perform any award(s) rendered pursuant to this arbitration proceeding...and voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.” *Bazil Affidavit*, ¶3.
10. On or about December 22, 2005, Respondents LAM, LCM and Shah filed a joint Motion to Dismiss and Answer with the NFA. *Bazil Affidavit*, ¶4.
11. On or about May 3, 2006, the NFA appointed a three (3) member arbitration panel (the “Arbitration Panel”) to conduct a hearing. *Bazil Affidavit*, ¶5.

12. On or about August 14, 2006, the Arbitration Panel denied Respondents' Motion to Dismiss. *Bazil Affidavit*, ¶6.
13. After due notice of the appointment of said Arbitration Panel, and of the hearing dates(s), the hearings on the consolidated claims were held on November 30, 2006, December 1, 2006, January 23, 2007 and January 24, 2007. *Bazil Affidavit*, ¶7.
14. Respondents LAM, LCM and Shah appeared through counsel and in person, and had a full and fair opportunity to submit evidence and cross-examine witnesses. *Bazil Affidavit*, ¶8.
15. The Arbitration Panel rendered its award after hearing testimony and reviewing evidence presented by Petitioners in support of its claim against Respondents and evidence presented by Respondents in defense of such claims. Said award was duly issued by the Arbitration Panel on March 5, 2007 (the "Award"). On or about March 15, 2007, the Award was duly served by the NFA upon Respondents. *Bazil Affidavit*, ¶9.
16. The Arbitration Panel awarded Petitioner 2001 Jane F. McCarthy GRAT No. 5 compensatory damages and interest in the amount of \$1,216,453. *Bazil Affidavit*, ¶9.
17. Pursuant to Section 10(g) of the NFA Code of Arbitration, Respondents were required to comply with the award by making payment to Petitioner within thirty (30) days from the date of transmittal of the Award by the NFA. As of April 15, 2007 and through present, Respondents have failed to comply with the Award and have made no payment whatsoever to Respondents. *Bazil Affidavit*, ¶10.
18. Less than one (1) year has passed since the date of delivery of the Awards. *Bazil Affidavit*, ¶11.

19. The Award is fully enforceable in accordance with its terms and should be confirmed by this Court.

WHEREFORE, Petitioner respectfully requests that this Court issue an Order confirming the Award, and directing that judgment be entered thereon in favor of Petitioner and against Respondents, together with the costs and disbursements of this proceeding, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
October 1, 2007

  
Anthony W. Djinis, Esq. (bar number: 1672195)  
PICKARD AND DJINIS LLP  
1990 M Street, N.W.  
Suite 660  
Washington, D.C. 20036  
Phone: 202-223-4418

# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Petition of McCarthy Investments, LLC,  
Petitioner,

For an Order Pursuant to the Federal  
Arbitration Act, 9 U.S.C. § 1, et. seq.  
Confirming an Arbitration Award,

1 against –

Abbas A. Shah, Linuxor Asset Management, :  
LLC, and Linuxor Capital Management, LLC, :  
Respondents.

Index No. 07cv5617  
Hon. Denise Cote

Petition of 2001 Jane F. McCarthy GRAT No. 5,  
Petitioner,

For an Order Pursuant to the Federal  
Arbitration Act, 9 U.S.C. § 1, et. seq.  
Confirming an Arbitration Award,

2 against –

Abbas A. Shah, Linuxor Asset Management, :  
LLC, and Linuxor Capital Management, LLC, :  
Respondents.

Index No. 07cv5618  
Hon. Denise Cote

Petition of JFM Holdings L.P.,  
Petitioner,

For an Order Pursuant to the Federal  
Arbitration Act, 9 U.S.C. § 1, et. seq.  
Confirming an Arbitration Award,

3 against –

Abbas A. Shah, Linuxor Asset Management, :  
LLC, and Linuxor Capital Management, LLC, :  
Respondents.

Index No. 07cv5619  
Hon. Denise Cote

**AFFIDAVIT OF  
PHILLIP G. MCCARTHEY**

I, Phillip G. McCarthy, am 55 years of age and state as follows:

1. I hold a Bachelors of Arts degree from Gonzaga University and am a member of  
the Board of Trustees of Gonzaga University. I live and work in Salt Lake

City, Utah, and I have continuously resided in Utah for over 20 years. I am the manager and Chief Executive Officer of McCarthy Investments, which manages investment partnerships for McCarthy Investments, LLC., 2001 Jane F. McCarthy GRAT No. 5 and JFM Holdings, L.P. The office of McCarthy Investments is located in Salt Lake City, Utah.

2. I submit this affidavit in support of support of Petitioners' Reply Memorandum and Amended Petition of McCarthy Investments, LLC for an Order Pursuant to the Federal Arbitration Act, 9 U.S. C. §1, et. seq. Confirming an Arbitration Award against Abbas A. Shah, Linuxor Asset Management, LLC and Linuxor Capital Management, LLC (Index No 07cv5617), Reply Memorandum and Amended Petition of 2001 Jane F. McCarthy GRAT No. 5 for an Order Pursuant to the Federal Arbitration Act, 9 U.S. C. §1, et. seq. Confirming an Arbitration Award against Abbas A. Shah, Linuxor Asset Management, LLC and Linuxor Capital Management, LLC (Index No 07cv5618), and Reply Memorandum and Amended Petition of JFM Holdings L.P. for an Order Pursuant to the Federal Arbitration Act, 9 U.S. C. §1, et. seq. Confirming an Arbitration Award against Abbas A. Shah, Linuxor Asset Management, LLC and Linuxor Capital Management, LLC (Index No 07cv5619).
3. Petitioner McCarthy Investments, LLC is organized as a Delaware limited liability company. The members of Petitioner McCarthy Investments, LLC are: Trust Under Article Second of the Jane F. McCarthy GRAT No. 1; Trust Under Article Second of the Jane F. McCarthy GRAT No. 4; Trust Under Article Second of the Jane F. McCarthy GRAT No. 5; and Trust Under Article



Second of the Jane F. McCarthy GRAT No. 8. Under the terms of each of these trusts, the trustees have the sole and absolute authority to hold, manage and dispose of the assets of the trust. John O'Brien, Alaska Trust Company and I are the sole trustees of each of the foregoing trusts. John O'Brien has lived and worked in Utah for over 20 years. Alaska Trust Company is a corporation organized under the laws of the state of Alaska and maintains its principal place of business in Anchorage, Alaska. Accordingly, each of the members of Petitioner McCarthy Investments, LLC are domiciled in either the state of Alaska or Utah. The beneficiaries of the foregoing trusts reside in the states of Utah, Illinois, Washington and California.


4. Petitioner JFM Holdings L.P. is organized as a Delaware limited partnership. The general partner of Petitioner JFM Holdings, L.P. is JFM Capital Management, LLC, a Delaware limited liability company. The sole members of JFM Management, LLC are Trust Under Article Second of the Jane F. McCarthy GRAT No. 1; Trust Under Article Second of the Jane F. McCarthy GRAT No. 4; Petitioner Trust Under Article Second of the Jane F. McCarthy GRAT No. 5; and Trust Under Article Second of the Jane F. McCarthy GRAT No. 8. John O'Brien, Alaska Trust Company and I are the three trustees of each of the foregoing trusts. The limited partners of Petitioner JFM Holdings L.P. are Trust Under Article Second of the Jane F. McCarthy GRAT No. 1; Trust Under Article Second of the Jane F. McCarthy GRAT No. 4; Petitioner Trust Under Article Second of the Jane F. McCarthy GRAT No. 5; and Trust Under Article Second of the Jane F. McCarthy GRAT No. 8. Accordingly,

each of the partners of Petitioner JFM Holdings L.P. are domiciled in either the states of Alaska or Utah. The beneficiaries of the foregoing trusts reside in the states of Utah, Illinois, Washington and California

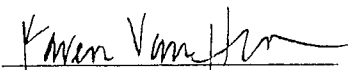
5. Petitioner 2001 Jane F. McCarthy GRAT No. 5 is a trust created under Alaska law. John O'Brien, Alaska Trust Company and I are the three trustees of each of the trust. Accordingly, each of the trustees of the 2001 Jane F. McCarthy Grat No. 5 are domiciled in either the states of Alaska or Utah. The beneficiaries of the foregoing trusts reside in the states of Utah, Illinois, Washington and California.

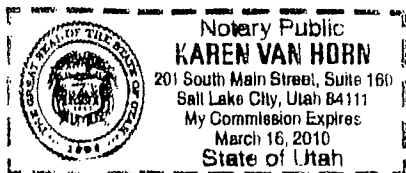
I declare that the foregoing is true and correct under penalty of perjury.

Dated: September 27, 2007

  
Philip G. McCarthy

Sworn to before me  
September 27, 2007

  
Notary Public

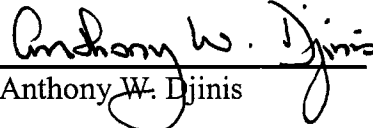


CERTIFICATE OF SERVICE

I, Anthony W. Djinis, hereby certify that on this 10th day of October 2007, I caused a true and correct copy of the foregoing Amended Petition of McCarthy Investments LLC, to Confirm Arbitration Award, Amended Petition of JFM Holdings, L.P. to Confirm Arbitration Award, and Amended Petition of 2001 Jane F McCarthy GRAT No. 5 to Confirm Arbitration Award to be served by First Class mail, Email and Facsimile upon counsel listed below.

Charles Manuel, Esq.  
Shiboleth, Yisraeli, Roberts & Zisman, LLP  
1 Penn Plaza  
Suite 2527  
New York, NY 10119

Counsel for Respondents

  
Anthony W. Djinis